

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

JOHN RONALD PRICE,)
Petitioner,) Cause No. CV-10-126-BLG-RFC
v.)
MIKE MAHONEY; ATTORNEY) ORDER ADOPTING FINDINGS
GENERAL OF THE STATE) AND RECOMMENDATIONS OF
OF MONTANA,) U.S. MAGISTRATE JUDGE
Respondent.)

)

United States Magistrate Judge Carolyn Ostby has entered Findings and Recommendation (*Doc. 5*) with respect to this case.

Upon service of a magistrate judge's findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). Petitioner has filed timely objections. (*Doc. 6*). Accordingly, the Court must make a *de novo* determination of those portions of the Findings and Recommendations to which objection is made. 28 U.S.C. § 636(b)(1). For the following reasons, Petitioner's objections are overruled.

Petitioner's response to the Order to Show Cause failed to adequately explain why he filed his federal petition 327 days late. Petitioner is not entitled to

an amount of tolling sufficient to cover the entire 327 day period. *Spitsyn v. Moore*, 345 F.3d 796, 802 (9th Cir. 2003). Petitioner does not claim that his petition was timely filed, nor could reasonable jurists find that his claims suffice to support equitable tolling for the full 327-day period that passed between expiration of the limitations period and his filing in October 2010. The petition must be dismissed with prejudice as time-barred.

After a de novo review, the Court determines the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and fact and **HEREBY ORDERS** they be adopted in their entirety.

Accordingly, **IT IS HEREBY ORDERED** that the Petition (*Doc. #1*) is **DENIED** and a certificate of appealability is **DENIED**. The Clerk of Court is directed to enter by separate document a judgment in favor of Respondents and against Petitioner.

The Clerk of Court shall notify the parties of the making of this Order and close this case accordingly.

DATED this 13 day of January, 2011


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE